

GARMAN TURNER GORDON LLP  
 GERALD M. GORDON  
 Nevada Bar No. 229  
 E-mail: ggordon@gtg.legal  
 JARED M. SECHRIST  
 Nevada Bar No. 10439  
 E-mail: jsechrist@gtg.legal  
 7251 Amigo St., Suite 210  
 Las Vegas, Nevada 89119  
 Tel: (725) 777-3000 / Fax: (725) 777-3112

*Attorneys for Tecumseh–Infinity Medical  
 Receivable Fund, LP*

MICHAEL D. NAPOLI, ESQ.  
*Pro hac vice*  
 AKERMAN LLP  
 2001 Ross Avenue, Suite 3600  
 Dallas, Texas 75201  
 Tel: (214) 720-4360 / Fax: (214) 720-8116  
 ARIEL E. STERN, ESQ.  
 Nevada Bar No. 8276  
 AKERMAN LLP  
 1635 Village Center Circle, Suite 200  
 Las Vegas, Nevada 89134  
 Tel: (702) 634-5000 / Fax: (702) 380-8572  
 Email: ariel.stern@akerman.com

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEVADA**

In re:  
 INFINITY CAPITAL MANAGEMENT,  
 INC.,  
 Debtor.

Case No. 21-14486-abl  
 Chapter 7

HASELECT-MEDICAL RECEIVABLES  
 LITIGATION FINANCE FUND  
 INTERNATIONAL SP,  
 Plaintiff,  
 v.  
 TECUMSEH-INFINITY MEDICAL  
 RECEIVABLES FUND, LP,  
 Defendant.

Adversary Case No. 21-01167-abl

**OBJECTION TO THE FIRST  
 AMENDED ALTERNATIVE DIRECT  
 TESTIMONY DECLARATION OF  
 MICHAEL GRIFFIN [ECF NO. 272]**

HASELECT-MEDICAL RECEIVABLES  
 LITIGATION FINANCE FUND  
 INTERNATIONAL SP, *et al.*,  
 Counter-Claimant  
 v.  
 TECUMSEH-INFINITY MEDICAL  
 RECEIVABLES FUND, LP, *et al.*,  
 Counter-Defendants.

Trial Date: August 24, 25, 28, 29, 31, 2023  
 Time: 9:30 a.m.

1 Tecumseh–Infinity Medical Receivable Fund, LP (“Tecumseh”) by and through counsel,  
2 respectfully submits its objections to the First Amended Alternative Direct Testimony Declaration  
3 of Michael Griffin [ECF 272] (the “Griffin Declaration”) which was filed on August 22, 2023.

4 **TECUMSEH’S OBJECTIONS**

5 1. Tecumseh objects to paragraph 10 of the Griffin Declaration. In paragraph 10, Mr.  
6 Griffin provides testimony as to the standard practices or standards of care as to the investment by  
7 hedge funds in medical receivables. This is classic expert testimony. Mr. Griffin was not  
8 designated as an expert in this matter as required by Federal Rule 26(a)(2) and has provided none  
9 of the required disclosures. He should not be allowed to provide undisclosed expert testimony on  
10 the eve of trial. Moreover, Mr. Griffin has not demonstrated that he has the necessary expertise to  
11 opine on these matters, has not set out a basis for his opinions and has not demonstrated that they  
12 are reliable.

13 2. Tecumseh objects to paragraph 11 of the Griffin Declaration. In paragraph 11, Mr.  
14 Griffin provides testimony as to the standard practices or standards of care as to the investment by  
15 hedge funds in medical receivables. This is classic expert testimony. Mr. Griffin was not  
16 designated as an expert in this matter as required by Federal Rule 26(a)(2) and has provided none  
17 of the required disclosures. He should not be allowed to provide undisclosed expert testimony on  
18 the eve of trial. Moreover, Mr. Griffin has not demonstrated that he has the necessary expertise to  
19 opine on these matters, has not set out a basis for his opinions and has not demonstrated that they  
20 are reliable.

21 3. Tecumseh objects to paragraph 13 on the grounds that Mr. Griffin’s recitation of  
22 Endre Dobozy’s explanation of the medical receivables business is hearsay. To the extent that it is  
23 not offered to prove the matter asserted, it is not relevant.

24 4. Tecumseh objects to paragraph 14 on the grounds that Mr. Griffin’s recitation of  
25 representations made by Mr. Dobozy is hearsay if offered to prove the matter asserted and  
26 irrelevant if not. Why HASelect elected to enter into a lending relationship with Infinity and what  
27 representations HASelect received are not relevant to any issue in this case which concerns  
28 whether HASelect’s lien attaches to the receivables acquired by Tecumseh.

1           5.       Tecumseh objects to the following phrase in paragraph 19: “based primarily on  
2 FTM’s representations that it had the ability to raise investment capital from international  
3 investors.” First, this is irrelevant. Why HASelect elected to enter into a lending relationship with  
4 Infinity and what representations HASelect received are not relevant to any issue in this case which  
5 concerns whether HASelect’s lien attaches to the receivables acquired by Tecumseh. Second, Mr.  
6 Griffin fails to identify any such representations. As such, this statement lacks foundation.

7           6.       Tecumseh objects to paragraph 37. Simon Clark’s internal responsibilities at GAM  
8 or HASelect are not relevant to this case. To the extent, Mr. Griffin suggests that Mr. Clark failed  
9 to properly discharge his duties (of which there is no evidence), Mr. Clark’s conduct is imputed to  
10 GAM and HASelect who were his employers at the time.

11          7.       Tecumseh objects to paragraphs 40 through 46 on the grounds of relevancy. The  
12 claims of HASelect and GAM for unfair competition and misuse of trade secrets is the subject of  
13 pending litigation between and among the parties in Illinois. They are not properly before the Court  
14 and have no relevance to any issue in this case. HASelect has presented this analysis as part of its  
15 unclean hands defense to Tecumseh’s purchase money resulting trust. But, as Tecumseh has  
16 argued previously, HASelect is alleging the wrong kind of misconduct. HASelect alleges no more  
17 than “misconduct in the abstract, unrelated to the claim to which it is asserted as a defense” that  
18 the Ninth Circuit holds does not constitute unclean hands.” *Republic Molding Corp. v. B. W. Photo*  
19 *Utilities*, 319 F.2d 347, 349 (9th Cir. 1963). For a resulting trust, the misconduct must relate to a  
20 misuse of the trust to hide assets from or prevent execution by the beneficiary’s (here Tecumseh)  
21 creditors. *See In Hayne Fed. Credit Union v. Bailey*, 489 S.E. 2d 472, 476 (S.C. 1997); *also In re*  
22 *Torrez*, 63 B.R. 751, 754 (B.A.P. 9th Cir. 1986), *aff’d on other grounds*, 827 F.2d 1299 (9th Cir.  
23 1987). *In Hayne* for example, a father purchased a home in the name of his son, providing the  
24 purchase money. He used his son’s name in order to prevent his own creditors from reaching the  
25 home. Upon his son’s death, the *Hayne* court refused to enforce the resulting trust. The sort of  
26 unfair competition claims that HASelect’s seeks to assert by Mr. Griffin’s testimony are just not  
27 relevant to the sort of conduct necessary to prevent a resulting trust. Moreover, these claims as  
28 presented are far more prejudicial than relevant in violation of Federal Rule 408.

1           8.       Tecumseh objects to the final sentence of paragraph 46 (“I am informed and believe  
2 that PFD currently received [SIC] funding from Tecumseh.”). This statement is hearsay and lacks  
3 foundation.

4           9.       Tecumseh objects to paragraph 56. First, it is hearsay and without foundation. Mr.  
5 Griffin does not explain how he knows any of these facts from his personal knowledge. Second,  
6 he is speculating as to the parties’ intent. Third, the gist of this testimony is an attempt to make an  
7 unfair competition claim against Tecumseh which is not relevant to any issue in this case which  
8 concerns whether HASElect’s lien attaches to receivables acquired by Tecumseh. The claims of  
9 HASElect and GAM for unfair competition and misuse of trade secrets is the subject of pending  
10 litigation between and among the parties in Illinois. They are not properly before the Court and  
11 have no relevance to any issue in this case. Even if true, they do not amount to the type of  
12 misconduct necessary to avoid a resulting trust. *Hayne Fed. Credit Union*, 489 S.E. 2d at 476.  
13 Moreover, these claims are presented are far more prejudicial than relevant in violation of Federal  
14 Rule 408.

15           10.      Tecumseh objects to paragraphs 59 and 60 which discuss issues between Three Bell  
16 and HASElect on grounds of relevancy. Whether or not Three Bell was dissatisfied with GAM’s  
17 management of HASElect has nothing to do with this case. This testimony appears to be another  
18 attempt to suggest that Tecumseh competed unfairly with HASElect. The claims of HASElect and  
19 GAM for unfair competition and misuse of trade secrets is the subject of pending litigation between  
20 and among the parties in Illinois. They are not properly before the Court and have no relevance to  
21 any issue in this case. Even if true, they do not amount to the type of misconduct necessary to  
22 avoid a resulting trust. *Hayne Fed. Credit Union*, 489 S.E. 2d at 476. Moreover, these claims are  
23 presented are far more prejudicial than relevant in violation of Federal Rule 408.

24           11.      Tecumseh objects to paragraph 67 on the ground that Mr. Griffin has no basis on  
25 which to testify as to the state of Infinity’s office, its records or its software. He does not assert  
26 that he personally observed any of the facts to which he testifies.

27           12.      Tecumseh objects to paragraph 68 on the grounds of relevancy, hearsay and lack of  
28 foundation. Whatever Hemmers and Pantelas may have done to misappropriate assets from Infinity

1 or whatever misrepresentations they may have made – none of which are identified – is not relevant  
 2 to this case. As Mr. Griffin notes, these allegations are the subject of a separate case which does  
 3 not involve Tecumseh. None of these allegations have been pled in this case. Mr. Griffin does not  
 4 assert that he personally observed any fact purportedly documented in the Court’s docket in  
 5 another case. To the extent that he is attempting to recite what evidence exists in another case is  
 6 hearsay. Also, his testimony is vague and lacks specificity. He merely testifies that there is  
 7 evidence that Hemmers and Pantelas did “bad” things in another case. He doesn’t specify what  
 8 those may be. Tecumseh should not be put to the effort of attempting to litigate a case to which it  
 9 is not a party.

10 13. Tecumseh objects to the first sentence of paragraph 70 (“Through discovery  
 11 conducted after the Petition Date, HASElect discovered that Infinity sold and assigned a significant  
 12 number of Receivables included within HASElect’s Collateral to Tecumseh after entering into the  
 13 Sub-Advisory Agreement”). This statement is hearsay and outside of Mr. Griffin’s personal  
 14 knowledge. Moreover, it is argumentative, speculative and really just Mr. Griffin’s opinion on the  
 15 evidence. At least, he lays no foundation for his purported knowledge. What the evidence will  
 16 ultimately show and what the facts turn out to be is a decision reserved to this Court. Mr. Griffin’s  
 17 opinion as to the facts or the ultimate questions before the Court is simply irrelevant.

18 14. Tecumseh objects to the entirety of paragraph 71. This testimony is hearsay and  
 19 outside of Mr. Griffin’s personal knowledge. Moreover, it is argumentative, speculative and really  
 20 just Mr. Griffin’s opinion on the evidence. At least, he lays no foundation for his purported  
 21 knowledge. What the evidence will ultimately show and what the facts turn out to be is a decision  
 22 reserved to this Court. Mr. Griffin’s opinion as to the facts or the ultimate questions before the  
 23 Court is simply irrelevant.

24 15. Tecumseh objects to the following testimony in paragraph 72: (i) that Tecumseh  
 25 “hired Li Su ... to assist in the technical aspects of transferring HASElect’s Collateral from Infinity  
 26 to Tecumseh” and (ii) that Li Su worked simultaneously for GAM and Tecumseh. This testimony  
 27 is hearsay and outside of Mr. Griffin’s personal knowledge. Moreover, it is argumentative,  
 28 speculative and really just Mr. Griffin’s opinion on the evidence. At least, he lays no foundation

1 for his purported knowledge. What the evidence will ultimately show and what the facts turn out  
 2 to be is a decision reserved to this Court. Mr. Griffin's opinion as to the facts or the ultimate  
 3 questions before the Court is simply irrelevant. In addition, the entire topic is yet another attempt  
 4 to insert HASElect's and GAM's unfair competition claims into this case. The claims of HASElect  
 5 and GAM for unfair competition and misuse of trade secrets are the subject of pending litigation  
 6 between and among the parties in Illinois. They are not properly before the Court and have no  
 7 relevance to any issue in this case. Even if true, they do not amount to the type of misconduct  
 8 necessary to avoid a resulting trust. *Hayne Fed. Credit Union*, 489 S.E. 2d at 476. Moreover, these  
 9 claims are presented are far more prejudicial than relevant in violation of Federal Rule 408.

10 16. Tecumseh objects to paragraph 73 in its entirety. In this paragraph, Mr. Griffin  
 11 attempts to testify as to allegations that HASElect has made against Hemmers and Pantelas. As  
 12 discussed above, these allegations are the subject of separate case to which Tecumseh is not a party  
 13 and have not been pled in this case. This testimony is hearsay and outside of Mr. Griffin's personal  
 14 knowledge. Moreover, it is argumentative, speculative and really just Mr. Griffin's opinion on the  
 15 evidence. At least, he lays no foundation for his purported knowledge. What the evidence will  
 16 ultimately show and what the facts turn out to be is a decision reserved to this Court. Mr. Griffin's  
 17 opinion as to the facts or the ultimate questions before the Court is simply irrelevant. Moreover,  
 18 the entire topic is also irrelevant. None of the allegations have anything to do with Tecumseh. It is  
 19 just another attempt to insert extraneous disputes into this case.

20 17. Tecumseh objects to paragraph 74. First, it is hearsay, argumentative, speculative  
 21 and Mr. Griffin's opinion on the evidence. Whatever the evidence may show as to whether Mr.  
 22 Clark properly performed his duties while employed by GAM or what if any role he had in  
 23 Tecumseh's negotiations is something that the Court will determine if it is at all relevant to the  
 24 case. Mr. Griffin's opinion is irrelevant. Second, this is another attempt by HASElect to interject  
 25 unrelated disputes into this case. What Mr. Clark did after leaving his employment with GAM and  
 26 HASElect has nothing to do the pending dispute over HASElect's lien and Tecumseh's receivables.  
 27 Whether Mr. Clark did a good job or not while employed by GAM or HASElect has even less to  
 28 do with any issue in this case. Third, the first sentence is very misleading as it suggests that Mr.

1 Clark joined Tecumseh while still employed by GAM. The parties have stipulated that Mr. Clark  
2 resigned from GAM and HASElect in February 2020 and did not join Tecumseh until 2021.

3 **CONCLUSION**

4 For all of the forgoing reasons, Tecumseh respectfully requests that this Court enter an  
5 order sustaining its objections to Mr. Giffin's testimony as set forth herein and striking the  
6 objected-to testimony from the record.

7 Dated this 23<sup>rd</sup> day of August 2023.

8 GARMAN TURNER GORDON LLP

9 By: /s/Jared Sechrist  
10 GERALD M. GORDON, ESQ.  
11 JARED SECHRIST, ESQ,  
12 7251 Amigo St., Suite 210  
13 Las Vegas, Nevada 89119

14 -and-

15 MICHAEL D. NAPOLI, ESQ.  
16 *Pro hac vice*  
17 AKERMAN LLP  
18 2001 Ross Avenue, Suite 3600  
19 Dallas, Texas 75201  
20 Tel: (214) 720-4360 / Fax: (214) 720-8116

21 ARIEL E. STERN, ESQ.  
22 Nevada Bar No. 8276  
23 AKERMAN LLP  
24 1635 Village Center Circle, Suite 200  
25 Las Vegas, Nevada 89134  
26 Tel: (702) 634-5000 / Fax: (702) 380-8572

27 *Attorneys for Tecumseh-Infinity Medical*  
28 *Receivable Fund, LP*

**CERTIFICATE OF SERVICE**

On August 23, 2023, I served the following document(s):

- a. *Objection to the First Amended Alternative Direct Testimony Declaration of Michael Griffin [ECF NO. 272]* Dkt. No. 274

I served the above-named document(s) by the following means to the persons as listed below:

☒ ECF System: See attached ECF Confirmation Sheets.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23<sup>rd</sup> day of August 2023.

/s/ Tonya Binns  
an employee of  
Garman Turner Gordon LLP